



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-2900 FAX (603) 271-2456



James and Terri Mitchell  
P.O. Box 324  
Hinsdale, NH 03451

Re: Taylor Heights & Butler Avenue  
Hinsdale, NH

ADMINISTRATIVE ORDER  
No. WMD 03-18

August 15, 2003

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to James and Terri Mitchell pursuant to RSA 149-M:15, I. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. James and Terri Mitchell are individuals having a mailing address of P.O. Box 324, Hinsdale, NH 03451.

**C. STATEMENTS OF FACTS AND LAW**

1. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100 – 300, 2100 *et seq.* ("Solid Waste Rules") to implement this program.
2. James and Terri Mitchell are the owners of land adjacent to Taylor Heights and Butler Avenue, Hinsdale, NH, more particularly described in a deed recorded in the Cheshire County Registry of Deeds at Book 1221, Page 664, and identified on Hinsdale Tax Map 45 as Lot 9 ("the Site").
3. On July 10, 2003, DES received a complaint alleging that tires have been thrown into a ravine at the Site.
4. On July 16, 2003, DES personnel investigated the complaint by conducting an inspection of the Site ("Inspection"). The purpose of the Inspection was to determine James and Terri Mitchell's compliance status relative to RSA 149-M and the Solid Waste Rules. Mr. and Mrs. Mitchell were not present at the time of the inspection.
5. During the Inspection, DES personnel observed several thousand scrap tires in a ravine at the Site.
6. RSA 149-M:4, XXII defines "solid waste" as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."

7. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."

8. The scrap tires observed by DES personnel at the Site are a solid waste as defined by RSA 149-M:4, XXII.

9. RSA 149-M:4, IX defines a "[solid waste] facility" as "a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste."

10. The Site constitutes a "solid waste facility" as defined by RSA 149-M:4, IX

11. Env-Wm 102.116 defines "owner" as "a person who owns a facility or part of a [solid waste] facility."

12. James and Terri Mitchell are the owners of a solid waste facility.

13. RSA 149-M:9, I states that "No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES]."

14. A review of DES files shows that James nor Terri Mitchell have not applied for or holds a permit to operate a solid waste facility at any New Hampshire location.

15. RSA 149-M:9, II states that "It shall be unlawful to transport solid waste to, or to dispose of solid waste at, any facility other than an approved facility."

16. Solid waste has been disposed of at the Site. This Site is not approved to accept solid waste.

#### **D. DETERMINATION OF VIOLATIONS**

1. James and Terri Mitchell have violated RSA 149-M:9, I by operating an unpermitted solid waste facility.

2. James and Terri Mitchell have violated RSA 149-M:9, II by failing to dispose of solid waste at a permitted solid waste facility.

#### **E. ORDER**

Based on the above findings, DES hereby orders James and Terri Mitchell as follows:

1. **Immediately** cease operating an unpermitted solid waste facility.

**Immediately** cease disposing of solid waste at an unpermitted facility

3. **Within 30 days** of this Order, submit to DES for approval a Scope of for the removal of all solid waste, specifically the scrap tires at the Site. Include as part of the Scope of Work a schedule which details when the work will be done. The time schedule shall not exceed one year from the date of this Order.

4. Submit one written status report to DES **within 7 days of the completion of the clean-up**, certifying that corrective measures have been implemented and compliance achieved. Include in the report

supporting documentation describing those measures taken to achieve compliance, copies of any written plans or proceedings developed, and copies of disposal receipts.

5. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Carl Woodbury, Supervisor  
DES Waste Management Division  
6 Hazen Drive  
Concord, NH 03301  
Telephone: (603) 271-3899  
Fax: (603) 271-2456


#### F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve James and Terri Mitchell of the obligation to comply with the Order.

#### G. OTHER PROVISIONS

Please note that RSA 149-M provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. James and Terri Mitchell remain obligated to comply with all applicable requirements, in particular RSA 149-M. DES will continue to monitor James and Terri Mitchell's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Cheshire County Registry of Deeds so as to run with the land.

  
**COPY**  
Philip J. O'Brien, Ph.D., P.G., Director  
Waste Management Division

  
**COPY**  
Michael  
Department of

Certified Mail/RRR: 7000 1670 0000 0584 3106

cc: DB/FILE/ORDER  
Gretchen Rule, DES Legal Unit  
Public Information Coordinator, DES  
Jennifer Patterson, Sr. Assistant Attorney General  
Town Clerk, Hinsdale, NH  
Richard Mitchell, Hinsdale, NH